



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

FEB 06 2019

REPLY TO THE ATTENTION OF

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mack Butterfield
Thunder Diesel & Performance, Co.
1835 South College Spur
Mountain Home, Arkansas 72653

Re: Finding of Violation for Clean Air Act Violations

Dear Mr. Butterfield:

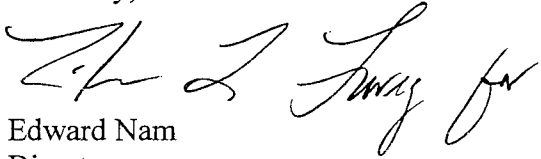
The U.S. Environmental Protection Agency is issuing the enclosed Finding of Violation (FOV) to Thunder Diesel & Performance, Co. (Thunder Diesel or you) for violating Section 203(a)(3)(B) of the Clean Air Act (CAA), 42 U.S.C. § 7522(a)(3)(B). As summarized in the attached FOV, EPA has determined that Thunder Diesel has sold and/or offered to sell parts or components that bypass, defeat, or render inoperative elements of design of those engines that were installed by the original equipment manufacturer in order to comply with CAA emission standards.

We are offering you an opportunity to confer with us about the violations alleged in the FOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply, and the steps you will take to prevent future violations. In addition, in order to make the conference more productive, we encourage you to submit to us any information responsive to the FOV prior to the conference date.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contact in this matter is Cody Yarbrough. You may call him at (312) 886-9137 to request a conference. You should make the request within 10 calendar days following receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Nam", written in a cursive style.

Edward Nam
Director
Air and Radiation Division

Enclosure

cc: Hazel Ocampo, Procopio

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

Thunder Diesel & Performance, Co.
Mountain Home, Arkansas

Proceedings Pursuant to
The Clean Air Act,
42 U.S.C. §§ 7401–7671q

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FINDING OF VIOLATION

EPA-5-19-MOB-01

FINDING OF VIOLATION

The U.S. Environmental Protection Agency (EPA) is issuing this Finding of Violation to Thunder Diesel & Performance, Co. (Thunder Diesel) for violating Section 203(a)(3)(B) of the Clean Air Act (CAA), 42 U.S.C. § 7522(a)(3)(B).

Statutory and Regulatory Background

1. Title II of the CAA, 42 U.S.C. §§ 7521–7554, was enacted to reduce air pollution from mobile sources. In enacting the CAA, Congress found, in part, that “the increasing use of motor vehicles . . . has resulted in mounting dangers to the public health and welfare.” Section 101(a)(2) of the CAA, 42 U.S.C. § 7401(a)(2). Congress’s purpose in enacting the CAA included “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population,” and “to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution.” Section 101(b)(1)–(2) of the CAA, 42 U.S.C. § 7401(b)(1)–(2).
2. EPA promulgated emission standards for particulate matter (PM), nitrogen oxides (NO_x), and other pollutants applicable to motor vehicles and motor vehicle engines, under Section 202 of the CAA, 42 U.S.C. § 7521. *See generally* 40 C.F.R. Part 86.
3. Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), prohibits a motor vehicle manufacturer from selling a new motor vehicle in the United States unless the motor vehicle is covered by a certificate of conformity. EPA issues certificates of conformity to motor vehicle and motor vehicle engine manufacturers under Section 206(a) of the CAA, 42 U.S.C. § 7525(a), to certify that a particular group of motor vehicles and motor vehicle engines conform to applicable EPA requirements governing motor vehicle emissions. The certificate of conformity will include, among other things, a description of the motor vehicle engines, their emission control systems, all auxiliary emission control devices, and the engine parameters monitored.
4. Motor vehicle and motor vehicle engine manufacturers employ many devices and elements of design to meet emission standards. *Element of design* means “any control system (i.e., computer software, electronic control system, emission control system,

computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine.”
See 40 C.F.R. §§ 86.094-2 and 86.1803-01.

5. To meet the emission standards in 40 C.F.R. Part 86, and qualify for a certificate of conformity, diesel-powered motor vehicle and motor vehicle engine manufacturers may utilize control devices or elements of design such as Diesel Particulate Filter (DPF), Exhaust Gas Recirculation (EGR), Diesel Oxidation Catalyst (DOC), and/or Selective Catalytic Reduction (SCR) systems.
6. Diesel-powered motor vehicle and motor vehicle engine manufacturers may also employ retarded fuel injection timing as a primary element of design to limit emissions of NO_x. *See* 59 Fed. Reg. 23,264 at 23,418 (May 5, 1994) (“[I]njection timing has a very significant impact on NO_x emission rates, with advanced timing settings being associated with higher NO_x . . .”).
7. Modern motor vehicles and engines are equipped with electronic control modules (ECMs). ECMs continuously monitor engine and other operating parameters and control the emission control devices and elements of design, such as the DPF, EGR, SCR systems and the engine fueling strategy.
8. Under Section 202(m) of the CAA, 42 U.S.C. § 7521(m), EPA promulgated regulations for motor vehicles manufactured after 2007 that require motor vehicles to have numerous devices or elements of design that, working together, can detect problems with the vehicle’s emission-related systems, alert drivers to these problems, and store electronically-generated malfunction information. *See* 40 C.F.R. §§ 86.007-17, 86.010-18, and 86.1806-05. These devices or elements of design are referred to as “onboard diagnostic systems” or “OBD” systems.
9. Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), makes it unlawful for “any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.”
10. Section 216(2) of the CAA, 42 U.S.C. § 7550(2), defines “motor vehicle” as “any self-propelled vehicle designed for transporting persons or property on a street or highway.” *See also* 40 C.F.R. § 85.1703 (further defining “motor vehicle”).

Background

11. Thunder Diesel is an aftermarket automotive parts supplier located in Mountain Home, Arkansas.
12. Thunder Diesel is a person, as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
13. On July 24, 2018, EPA issued a CAA Section 208 Information Request to Thunder Diesel.
14. On September 24, 2018, Thunder Diesel responded to EPA's Information Request. In the response, Thunder Diesel provided information showing that between January 1, 2016, and July 24, 2018, the company sold at least 191,044 parts or components where a principal effect of each part or component was to disable, remove, bypass, defeat, or render inoperative air pollution emission control systems installed on or in diesel-powered motor vehicles and motor vehicle engines in compliance with Title II of the CAA. More specifically, Thunder Diesel sold or offered to sell parts and components that removed, disconnected, bypassed, or disabled the engine fueling strategy, DOCs, DPFs, EGRs, OBDs, and/or SCR systems, and/or tampered with the emissions-related elements of the ECM.
15. In Thunder Diesel's September 24, 2018 response to EPA's Information Request, the company asserted that the parts and/or components sold by Thunder Diesel are "exclusively intended for racing purposes."
16. EPA finds that the parts and components sold and offered for sale by Thunder Diesel are intended for "motor vehicles" as defined by Section 216(2) of the CAA. As a legal matter, there is no "off-road use only" or "competition only" exemption under the CAA for motor vehicles or motor vehicle engines. "Motor vehicle" is defined as "any self-propelled vehicle designed for transporting persons or property on a street or highway." CAA § 216(2), 42 U.S.C. § 7550(2); *see also* 40 C.F.R. § 85.1703 (further defining "motor vehicle"). These definitions make no exemption for motor vehicles or motor vehicle engines used for competition.¹ More generally, these definitions are based on vehicle attributes (*e.g.*, ability to travel over 25 miles per hour, lack of features that render street use unsafe) and make no exemption for vehicles based on their use.

Violations

17. EPA finds that Thunder Diesel violated and continues to violate Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), by selling or offering to sell parts and/or components where a principal effect of the part or component is to bypass, defeat, or

¹ In contrast, the CAA exempts from the definition of "nonroad vehicle" and "nonroad engine" those vehicles and engines used solely for competition. CAA § 216(10)–(11); 42 U.S.C. § 7550(10)–(11). EPA has implemented regulations describing how to exempt from CAA requirements nonroad vehicles and engines used solely for competition. 40 C.F.R. § 1068.235. These regulations explicitly do not apply to motor vehicles and motor vehicle engines. 40 C.F.R. § 85.1701(a)(1).

render inoperative the engine fueling strategy, DPF, EGR, OBD, and SCR systems and tampering with the emission-related elements of the ECM installed on thousands of motor vehicles.

18. EPA further finds that Thunder Diesel knew or should have known that such parts and/or components were being used by its customers to bypass, defeat, or render inoperative the emission controls on motor vehicles certified under the CAA.

Environmental Impact of Violations

19. These violations may result in excess emissions of PM, NO_x, hydrocarbons, and other air pollutants and contribute to increased ground level ozone concentrations. PM, especially fine particulates containing microscopic solids or liquid droplets, can get deep into the lungs and cause serious health problems, including decreased lung function; chronic bronchitis; and aggravated asthma. Additionally, current scientific evidence links short-term NO_x exposures, ranging from 30 minutes to 24 hours, with adverse respiratory effects including airway inflammation in healthy people and increased respiratory symptoms in people with asthma. Exposure to ground-level ozone can also reduce lung function and inflame lung tissue; repeated exposure may permanently scar lung tissue.

Enforcement Authority

20. EPA may bring an enforcement action for these violations under its administrative authority or by referring this matter to the United States Department of Justice with a recommendation that a civil complaint be filed in federal district court. CAA §§ 204 and 205, 42 U.S.C. §§ 7523 and 7524. Persons violating Section 203(a)(3) of the CAA, 42 U.S.C. § 7522(a)(3), are subject to an injunction under Section 204 of the CAA, 42 U.S.C. § 7523, and a civil penalty of up to \$4,619 for each violation. CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4.

Date

2/6/19

Edward Nam

Director

Air and Radiation Division

CERTIFICATE OF MAILING

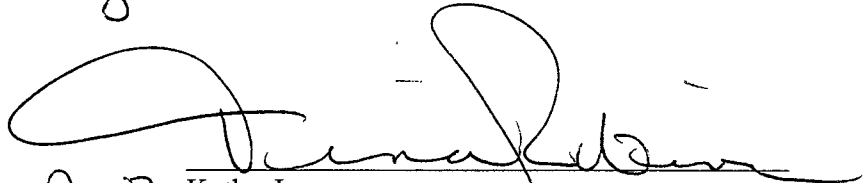
I certify that I sent a Finding of Violation, No. EPA-5-19-MOB-01, by Certified Mail, Return Receipt Requested, to:

Mack Butterfield
Thunder Diesel & Performance, Co.
1835 South College Spur
Mountain Home, Arkansas 72653

I also certify that I sent a Finding of Violation, by e-mail to:

Hazel Ocampo, Attorney
Procopio
Hazel.Ocampo@procopio.com

On the 7th day of February 2019.


For Kathy Jones
Program Technician
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER: 70150640 0004 59652143